

THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 13th day of December ,2006

W.P.No.24366 of 2004

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Between :

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M/s. Golla Chenchaiiah,
I.B.P. Retail Kerosene Dealer,
Singarayakonda, Prakasam
District, rep. by its Partner
Golla Venkata Ramanaiah ... Petitioner

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_____ and

The Joint Collector,
Prakasam District, Ongole
and another ... Respondents

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ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Order in Proceedings Rc.CS4/2120/2004, dated 11-10-2004 passed by the Joint Collector, Prakasam District, Ongole – 1st respondent herein – as arbitrary and illegal.

Under the impugned Proceedings, the 1st respondent directed the petitioner to obtain wholesale Kerosene Oil Form-B Licence under the provisions of the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supply) Order, 1980 (for short 'the Order'). Here, it may be made clear that the retail licence is not for the purpose of distributing the kerosene among the cardholders under the Public Distribution System. However, it appears, since the petitioner is a retailer kerosene dealer, the 1st respondent by his letter dated 3-10-1981 directed the Tahsildar, Kandukur to treat the petitioner as a retailer and attach Singarayakonda and adjacent village cardholders to him to supply kerosene with immediate effect. Therefore, the petitioner has started distributing kerosene to the cardholders of Singarayakonda and adjacent villages, apart from the general public. While the matter stood thus, in the year 1995, a restriction was imposed on the petitioner for supply of kerosene i.e. only one-third of kerosene to the cardholders and two-thirds for general public. Aggrieved by the same, the petitioner earlier filed Writ Petition

No.12120 of 1995 and the same was disposed of by a Division Bench of this Court by an Order dated 27-11-1996, wherein it was held as under:

“5. We have scanned through the file submitted by the learned Government Pleader for which purpose this case was adjourned. As yet, no proceedings have been initiated against the petitioner for any enquiry. It is pertinent to mention that action can be taken against the petitioner, if the enquiry is initiated and pending and that the directives of this kind can be issued to withhold the distribution of kerosene. There being no such enquiry, we have to necessarily hold that the directives of the 2nd respondent to withhold kerosene, other than the cardholders, and store it with him was quite arbitrary. More so, when the 2nd respondent imposes condition on the petitioner that he should lift the entire quota of 72 kilo litres of kerosene, but to distribute only 25 kilo litres to cardholders and keep the rest with him without supplying to anybody and thus the very object of public distribution system is defeated, as the supply of kerosene is regulated because of the scarcity and importance of the same. If kerosene has to be necessarily drawn, but cannot be supplied, that too a major quantity of drawal, it will negate the very purpose of public distribution system. That apart, the petitioner pays the price for the kerosene according to the allotment and it is quite unreasonable on the part of the second respondent to force the petitioner to waste not only the kerosene by ordering it not to supply to others other than card holders, but also suffer financially as the investment becomes dead. We are of the view that the 2nd respondent was not correct in imposing the condition that the petitioner shall lift the entire allotted quantity, but supply only 1/3rd and keep 2/3rd with him for no purpose. Of course, that trouble is solved because of the interim order of this Court granted on 30-6-1995 passed in WPMP No.14784 of 1995. We continue the same direction as final order in this Writ Petition. But, we have to make observation with regard to the conduct of the business by the petitioner. As indisputably, the kerosene which the petitioner draws is meant for public distribution in accordance with the directives of the Joint Collector, who fixes the quantity for drawal and also for distribution every month, the petitioner is obliged to follow the same. It is needless to mention that if such directives issued henceforth every month, are violated, then appropriate action can be initiated against the petitioner.”

Thereafter, the petitioner has been continuing his business as usual and is also supplying kerosene to the cardholders of Singarayakonda and adjacent villages, which were attached to his bunk. Now, under

the impugned Proceedings, the petitioner was directed to obtain a wholesale licence on the ground that a dealer, who lifted 72 Kilo Litres of huge quantity of kerosene from Oil Company cannot be treated as a retail dealer and for the present, the PDS kerosene district allotment is not sufficient to meet the requirements under the PDS and hence, supply of kerosene to *bona fide* consumers does not arise. Further, in accordance with the present guidelines from the Government, kerosene should not be distributed to other than cardholders and distribution of kerosene oil under PDS to six villages at one point is not genuine and also contrary to the guidelines of Government to supply kerosene at doorsteps of the fair price shops. Petitioner has also no financial loss in distribution of kerosene oil to fair price shops as a wholesaler, since he will get his margin as usual.

The only controversy that requires to be resolved is whether the petitioner cannot be treated as a retailer under the Control Orders.

The definition of 'retailer' under Clause 2(m) of the Order reads as under:

“ 'retailer' means a person who obtains petroleum products from the wholesaler or an oil company for sale to the General Public”

It is an admitted fact that the petitioner was issued Form-B licence as a retailer, who obtains kerosene from the oil companies for sale to the general public. It is the authorities, which have treated the petitioner as a retailer and attached the cardholders of Singarayakonda and adjacent villages for supply of kerosene, to his bunk. May be, it is difficult for the cardholders to come and take delivery of kerosene oil from the bunk of the petitioner. If that is so, it is always open for the respondents to take appropriate action as per law, but that itself does not empower the respondents from asking the petitioner to seek for

conversion of retail kerosene licence held by him to that of wholesale licence. The wholesaler is supposed to sell the kerosene only to the retailers and none else. Whereas, a retailer can obtain kerosene from the wholesaler or an oil company and distribute the same to the general public. Therefore, the impugned Order directing the petitioner to seek conversion of the retail licence to that of wholesale licence is arbitrary, illegal and contrary to the very definition of 'retailer' as noticed above.

Learned Government Pleader advanced another argument saying that as per G.O.Ms.No.21, Consumer Affairs, Food and Civil Supplies (CS.I) Department, dated 7-2-2005 read with the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993, the Government has decided to rationalize the distribution of kerosene in order to ensure that non-LPG cardholders shall get supply of kerosene adequately. Further, kerosene being an essential commodity, the authorities are at liberty to impose any condition on the petitioner in the manner asking the petitioner to convert his licence into that of a wholesale licence. May be, the authorities are at liberty to control the PDS kerosene, but they have no authority under the law for asking the petitioner to convert the retail licence, which is issued for kerosene distribution among the general public to that of a wholesale licence. Insofar as Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 is concerned, it is nothing to do with the licensing Orders. The licence is not issued to the petitioner under 1993 Orders. The Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 contemplates restriction on use and fixation of ceiling price and does not deal about the wholesale and retail dealers. The petitioner is issued with the licence under the A.P. Petroleum Products (Licensing and Restriction of Supply) Order, 1980 as a retailer.

Learned Government Pleader raised yet another argument that under the impugned Order the petitioner's request for distribution of kerosene to the persons other than the cardholders was also rejected. May be, the authorities are entitled to put such a condition and allot sufficient number of cards proportionate to that of the allotment made to him as retailer by the oil company, but the authorities cannot ask the petitioner not to distribute the kerosene to the general public by converting the retail licence to that of wholesale licence because the licence itself is obtained for the purpose of distribution among the general public.

For all the above reasons, the impugned Order is liable to be set aside and is accordingly set aside. The Writ Petition is, therefore, allowed. No order as to costs.

13-12-2006

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